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NOV 8 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 8, 2000

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by hand

Magalie Roman Salas, Esq.
Secretary (TW-A325)
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, DC 20554

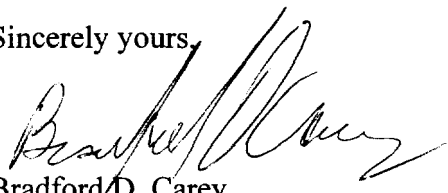
Re: MM Docket 99-239
Amendment of §73.202
Edwards & Johannesburg, California
Petition for Reconsideration

Dear Ms Salas:

I forward herewith on behalf of Amaturro Group of L.A., Ltd. an original and six copies of a Reply to Opposition to Petition for Reconsideration of the Report and Order issued in the above referenced proceeding.

Any questions regarding this matter should be directed to the attention of the undersigned Counsel for Amaturro Group of L.A., Ltd.

Sincerely yours,


Bradford D. Carey

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	RM-
of the Commission's Rules)	
FM Broadcast Station)	
)	
Edwards, California)	
Johannesburg, California)	MM Docket No. 99-239
)	
Avalon, California)	
Fountain Valley, California)	
Adelanto, California)	
Ridgecrest, California)	
Riverside, California)	
To: Chief, Allocations Branch,		
Mass Media Bureau		

REPLY OF AMATURO GROUP OF L.A., LTD.
to
Opposition to Petition for Reconsideration

November 8, 2000

Amaturo Group of LA., LTD.

By its Attorneys,

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Joseph C. Chautin, III

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REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

I. INTRODUCTION.

Amaturo Group of L.A., Ltd (“Amaturo”), by counsel, hereby states its Reply to the *Opposition to Amaturo Petition for Reconsideration* (“Opposition” or “Adelman’s Opposition”) filed by Adelman Communications, Inc. (“Adelman”) on September 19, 2000.¹ Facing an inability to meet Amaturo’s arguments with facts or controlling legal authority in its favor, in its Opposition Adelman distorts Amaturo’s points and then, as if he were an inexperienced attorney, reaches downward to attack the Petitioner. Rather than take sufficient time to research the controlling legal principals or even review the cases released by the Commission recently, Adelman and its counsel: (1) impugn the dignity of the Commission’s proceeding by mis-stating Amaturo’s assertions; (2) maliciously label Amaturo’s legitimate concerns that grant of Adelman’s proposal might affect consideration of Amaturo’s proposal² as being “paranoid delusion”; (3) speculate without any basis that “one wonders at the motivation of Amaturo for filing its ‘Counterproposal’ in MM Docket 99-239 and now this Petition...”; (4) accuse

¹Pursuant to the Rules and Regulations of the Commission, the due date for this Reply is based on the deadline for the filing of Oppositions and not the date on which one was filed. Public notice of the filing of the Petition for Reconsideration and the October 30, 2000 deadline for the filing of oppositions was given at 65 Fed. Reg. 60945. Reply pleadings may be filed within ten days thereafter. Therefore, this Reply is timely.

²Amaturo’s proposal to alter the allotment on which station KZIQ, Ridgecrest, operates would impact the same service area as is impacted by Adelman’s proposal under consideration in this proceeding. See MM Docket 99-329.

(again without basis) Amaturio as being “nothing more than a *spoiler*, who is abusing the Commission’s processes”; and, (5) in its grand finality, claims, again without support, that the Petition for Reconsideration “is nothing more than a *strike petition*.”

Amaturio is too respectful of the Commission and its processes to lower itself to the gutter-level, street fighting, name-calling tactics in which Adelman wallows. Amaturio will, however, demonstrate why its proposal very well should have been considered in the context of this proceeding.

II. ADELMAN’S OPPOSITION IMPROPERLY ATTACKS AMATURO RATHER THAN SINCERELY ADDRESSING THE ISSUES.

Amaturio has always stated forthrightly that its proposal is not *electrically* mutually exclusive with Adelman’s proposal. However, as Amaturio stated in its Comments, Reply Comments, and Petition for Reconsideration, the proposals of the two entities are mutually *legally* exclusive to the extent that reduction of reception services below five might impact, or become a part of, the Commission’s public interest considerations. Adelman misrepresents Amaturio’s position and statements, and then attacks Amaturio for the misrepresented position.

As discussed below, Amaturio’s concerns regarding mutual legal exclusivity are not of “paranoid delusion.” Rather, had Adelman taken time to research the issue, Adelman would have found more than ample precedent exists to not just justify, but rather compel, Amaturio’s participation in Docket 99-239 out of caution, if not necessity.

Adelman's spurious allegations of abuse of process and the filing of a strike pleading are clearly unsupported, simply wrong, and are themselves abusive and defamatory. Moreover, and is usually present when one takes the low road, they are disingenuous and are contradictory to Adelman's own position in MM Docket 99-329.

III. ALLOTMENT PROPOSALS HAVE BEEN AFFECTED BY OTHERS THAT ARE NOT MUTUALLY ELECTRICALLY EXCLUSIVE.

A. The Commission has required a proponent to file additional comments re-evaluating the public interest factors of its proposal in light of another proposal granted in a separate proceeding.

By *Further Notice of Proposed Rule Making*, (Galveston and Missouri City, Texas) in MM Docket No. 99-284 (Released September 15, 2000) (the "Galveston Further Notice"), the Chief, Allocations Branch, recited that pending before the Branch were the *Petition for Rule Making* filed by KQQK License, Inc., the *Comments, Reply Comments* and *Supplement to Reply Comments* filed by KQQK License, Inc., and the *Comments* filed by Tichenor License Corporation in that proceeding, concerning the proposed reallocation of channel 293C from Galveston to Missouri City, and modification of the Station KQQK license to specify Missouri City as the community of license. The Galveston Further Notice noted that KQQK License, Inc. urged that the adoption of its proposal would result in a more preferential arrangement of allotments by providing Missouri City with its first local transmission service.

The Galveston Further Notice referred to a *Report and Order* that had been adopted in MM Docket 99-26 granting a proposal filed by Tichenor to substitute Channel 285C3 for Channel 285A at Rosenberg, Texas and to modify the license of KOVA to specify operation on the channel at Missouri City. As a result, the Galveston Further Notice noted that “[i]n light of that action, the KQQK License proposal will no longer provide a first local service to Missouri City ...” and proceeded to solicit additional public comment in light of the fact that the proposal would now place a competitive service, rather than a first local, service at Missouri City.

The very issuance of that request for additional comments makes clear that very possibly, but not necessarily in this case, Commission consideration of one proposal may be negatively impacted by Commission action in a co-pending proceeding **even if the two proposals are not mutually *electrically* exclusive.**³

B. When an allotment proponent did not file in one proceeding his proposal (which was pending in another proceeding) to allot a channel to replace that which he wanted to move to another community, the move was denied.

In his *Memorandum Opinion and Order* in *Sibley, Iowa and Brandon, South Dakota*, MM Docket 99-66, DA 00-2226 (Released September 29, 2000), the Chief, Allocations Branch, denied a Petition for Reconsideration directed against the *Report and Order* which had denied a proposal to substitute Channel 261C3 for

³Whether the Commission has used the term mutually legally exclusive or not does not matter. It is clear that such a concept has been, indeed is presently being, used in certain instances and no amount of personal attack on Amaturio by Adelman alters that fact.

Channel 262A at Sibley and reallocate the channel to Brandon. A counter proposal to allocate Channel 261A at Brandon (as its first local service) was adopted, leaving Channel 261A at Sibley. Thus, Brandon would gain service without an accompanying loss of service at Sibley. The *Petition for Reconsideration* in Sibley noted that the proponent had filed a proposal to allocate Channel 282A at Sibley in another proceeding. Thus, Sibley would not be left without a local service were the proponent's proposal adopted.

The refusal of the Allocations Branch to consider in the context of Docket 99-66 the separate proposal to allocate channel 282A to Sibley underscores the appropriateness of Amatore bringing to the Commission's table its proposals in the context of **this** proceeding.

**C. THE COMMISSION WILL CONSIDER PROPOSALS
ADVANCED TOGETHER.**

In *Llano and Marble Falls, Texas*, 12 FC Rcd 6809 (1997), a petition to substitute Channel 285C3 for Channel 284C3 and reallocate the channel to Marble Falls was granted. While Channel 285C3 was the sole service at Llano, Llano would not be left without service because the proponent in the proceeding had also proposed the allotment of Channel 242A at Llano.

It appears that the critical difference between the facts of *Sibley, Iowa and Brandon, South Dakota* and those of *Llano and Marble Falls, Texas* is that in *Llano*, all of the proposed allotment changes to be considered were before the Commission in one proceeding, whereas the hapless proponent's proposals in *Sibley* were advanced in two proceedings. The Commission may wish to proceed

on the Llano and Marble Falls basis to conclude these two potentially legally exclusive proceedings together.

IV. THE COMMISSION HAS COMBINED RULE MAKING PROPOSALS IN THE SAME PROCEEDING WHEN PUBLIC INTEREST ANALYSIS OVERLAPPED.

In the *Report and Order* in *Cloverdale, Point Arena and Cazadero, California*, MM Docket Numbers 99-180 and 00-59, DA 00-2064 (Released September 15, 2000), the Chief, Allocations Branch held that “[a]lthough the two proposals are not technically mutually exclusive, we will combine them for administrative ease and efficiency because they involve a common community.” Combined in the same proceeding were a proposal to allot Channel 274A at Cloverdale, California (and a counterproposal requesting allotment of Channel 274A at Cazadero, California) and a separate proposal (that had been filed by the party that filed the counterproposal in the Cloverdale proceeding) to substitute Channel 296A for 296B1 at Point Arena and reallocate the channel from Point Arena to Cloverdale.

After terming Cazadero as having “minimal indicia of community,” the allotment of Channel 274A to Cloverdale was granted. Then, the Report and Order turned to the proposal to reallocate the Point Arena channel to Cloverdale as a competitive allotment (rather than as a first allotment, which, absent the other proposal, it would have been). Based on an analysis of the gains and losses, reallocation of the channel was granted.

Once again, action on one allotment proposal affected the Commission's public interest consideration of another proposal that was pending before the Commission. The Commission may wish to proceed on the Cloverdale, Point Arena and Cazadero basis in this proceeding to resolve all of the proceedings.

V. AMATURO'S PROPOSALS MAY NOT BE FORECLOSED BY ADELMAN'S.

A. The Communications Act requires that Amaturio's proposal not be foreclosed by Adelman's proposal, but rather be compared with it.

The Communications Act of 1934, as Amended, requires that [i]n considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." 47 USC Section 307(b).

B. The Commission's Rules and Regulations contemplate Amaturio's participation in this proceeding.

The Commission's policies regarding amendment of the Table of Allotments specifically contemplate that parties whose plans may conflict with a proposal set forth in a Notice of Proposed Rule Making or a counterproposal thereto must file their plans before the end of the comment period for those plans to be considered in conjunction with the proposal set forth in the NPRM. *FM Channel Assignments*, 68RR2d 1124 (1990).

Were Amaturio to not have participated in this proceeding, Amaturio would have risked that the Commission might later determine that grant of Amaturio's petition for rule making was foreclosed by grant of Adelman's petition. Because Amaturio did present its proposal as a counterproposal, the Commission does have both Adelman's and Amaturio's proposals before it in one proceeding. Amaturio is entitled to its proposals not being foreclosed by action in this proceeding without them being compared with Adelman's proposals.

VI. AMATURO'S PETITION IS NEITHER A STRIKE PETITION NOR AN ABUSE OF PROCESS.

The filing of a Petition for Reconsideration by a party in interest to a Commission proceeding is specifically authorized by the Communications Act of 1934, as Amended and the Rules and Regulations of the Commission. Amaturio participated in the proceedings below. That the Report and Order below did not grant Amaturio's proposal does not deprive Amaturio of its right to seek reconsideration. Indeed, reconsideration proceedings exist for those who are not in agreement with the decision below to seek to have their position vindicated. By filing its Petition for Reconsideration, Amaturio is exercising its rights under the Communications Act and the Commission's Rules.

Amaturio is not a "spoiler." Amaturio has made it clear from the beginning that it seeks only to have its own proposals granted and is participating in this proceeding to permit the Commission to consider the public interest benefits of its proposals against those of Adelman were the Commission to determine that the public interest would not be served by grant of both. The cases cited herein make

clear that action in one proceeding may have negative consequences on another pending proposal if they are not all before the Commission in one proceeding. Through its participation in this proceeding, Amaturio seeks to provide the Commission the appropriate information for the Commission to make a choice between the proposals if adoption of one would affect consideration of the other. Amaturio's Petition is, therefore, clearly not a strike petition and Amaturio has not abused the Commission's processes. And, if Adelman really thought Amaturio's participation in this proceeding to be an abuse of process, Adelman certainly would not have filed its pleadings (which are similar to Amaturio's Comments in this proceedings) in MM Docket 99-329.

VII CONCLUSIONS.

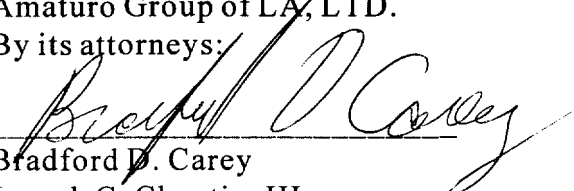
Amaturio respectfully submits that its pending allotment proposals should have been considered in the context of this proceeding. Actions of the Commission in earlier cases make clear that an allotment proponent who fails to present its proposals in response to a Notice of Proposed Rule Making where the public interest benefits may conflict or overlap, does so at its risk.

Amaturio has not argued that Adelman's proposals are not worthy of consideration. No matter how Adelman attempts to distract the Commission's attention, however, the fact remains that there is an area that will be affected by both Adelman's proposal and Amaturio's proposal where service will be reduced. Amaturio has asserted consistently that it believes that the public interest would be served by grant of both proposals. And, as Adelman has asserted, the upgrade of

KRAJ, Johannesburg to Class B1, does minimize the area and population that will receive fewer than five services. But, Adelman's statement that "The upgrade of KRAJ in Johannesburg to Class B1, means that the only loss of service that will occur in this area will be due to Amaturio's proposed downgrade of KZIQ" is nothing but an attempt at sleight of hand, is wrong, begs the issue, and is disingenuous. It just as well could be stated that the upgrade of KRAJ means that the only loss of service that will occur in this area will be due to **Adelman's** proposed changes. And that only demonstrates the fact that if the Commission were not to grant both proposals, they must be considered together and against one-another.

WHEREFOR, Amaturio Group of LA., Ltd. respectfully urges that the Report and Order in this proceeding be reconsidered and that the allotment proposals set forth in this proceeding by Amaturio Group of LA., Ltd. be granted.

Respectfully Submitted,
Amaturio Group of LA, LTD.
By its attorneys:


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Dated as of
November 8, 2000

CERTIFICATE OF SERVICE

The undersigned, an attorney in the law firm of Hardy, Carey and Chautin, L.L.P., hereby certifies that on this date a copy of the foregoing document has been mailed by First Class United States Mail, postage prepaid, to:

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Dated: November 17, 2000

By: 

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